

**No. WD81200**

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**In the  
Missouri Court of Appeals  
Western District**

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**SHANNON J. EDWARDS,**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

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**Appeal from Circuit Court of Jackson County, Missouri  
Sixteenth Judicial Circuit  
The Honorable Jack R. Grate, Judge**

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**RESPONDENT'S BRIEF**

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## STATEMENT OF FACTS

Defendant, Shannon Edwards, was charged in the Circuit Court of Jackson County with statutory sodomy in cause 1516-CR02873 and with the class C felony of abuse of a child in cause 1616-CR01315-01 (L.F. 10:1-2, 14:1-2). On June 24, 2016, Defendant entered a plea of guilty to child molestation in cause 1516-CR02873 and to abuse of a child in cause 1616-CR01315-01 before the Honorable Jack R. Grate (L.F. 1-20). The State recommended concurrent sentences of ten years for child molestation and seven years for abuse of a child (L.F. 13:2).

In cause 1616-CR01315-01, Defendant admitted that between December 1, 2014, and December 31, 2014, she subjected A.E. to sexual contact by making him insert a dildo into Defendant's vagina and that A.E. was less than 14 years old (L.F. 13:4). In cause 1616-CR01315-01, Defendant admitted that on or about January 2, 2015, she knowingly struck A.E. with a belt (L.F. 13:4).

Defendant stated that no one forced or threatened her to plead guilty and that she understood the rights she was giving up by pleading guilty (L.F. 13:1-4). The court accepted Defendant's plea and sentenced her in accordance with the State's recommendation to concurrent sentences of ten years for child molestation and seven years for abuse of a child (L.F. 13:5).

On August 22, 2016, Defendant timely filed a *pro se* motion for postconviction relief (L.F. 2:1). On September 7, 2016, the motion court

appointed the Public Defender's Office to represent Defendant and granted an extension of time for filing an amended motion (L.F. 3:1). On January 24, 2017, postconviction counsel entered appearance (L.F. 4:1). The transcript of the guilty plea and sentencing hearing was filed on January 27, 2017 (L.F.5:1). On April 27, 2017, counsel timely filed an amended motion (L.F. 6:1). On August 11, 2017, the motion court held an evidentiary hearing (Tr. 1-57). On September 22, 2017, the motion court issued findings of fact and conclusions of law, denying Defendant's postconviction motion (L.F. 7:1-57).

## ARGUMENT

**The motion court did not clearly err in denying, after an evidentiary hearing, Defendant's claim that counsel coerced her plea by telling her that if she went to trial she would lose and she would receive a sentence of 15 to 25 years.**

Defendant claims that her counsel induced her plea of guilty by telling her that if she went to trial she would lose and she would receive a sentence of 15 to 25 years (App. Br. 9-14).

Defendant's amended motion alleged that she wanted to go to trial and to testify that she did not commit the crimes and that the allegations were fabricated by A.E. and his father in an effort to remove Defendant from their home (L.F. 6:3). Defendant alleged that counsel told her that she would likely be convicted and that she would receive a sentence of 15 to 25 years (L.F. 6:3). Defendant alleged that counsel urged her to plead guilty to a 10-year sentence (L.F. 6:4). Defendant alleged that she pleaded guilty out of fear that she would receive a higher sentence if she went to trial (L.F. 6:4).

The motion court held an evidentiary hearing (Tr. 1-57). Plea counsel testified at the evidentiary hearing that she reviewed discovery and that she met with Defendant to explain the court procedure and the range of punishment (Tr. 5-6). Counsel stated that Defendant was initially charged with statutory sodomy and that she was facing a 30-year sentence of which

she had to serve 85% (Tr. 7). Counsel testified that she deposed A.E. and his father and that she conducted a “491 hearing” (Tr. 6). Counsel stated that A.E. seemed to be a credible witness and counsel discussed that with Defendant (Tr. 7).

Counsel stated that after the 491 hearing, Defendant indicated that she wanted to work toward plea negotiations (Tr. 6-7). Counsel testified that she negotiated possible plea agreements with the prosecutor and that the prosecutor gave her two options—either take 15 years on a child molestation and dismiss child abuse or accept concurrent sentences of 10 years for child molestation and seven years for child abuse (Tr. 9). Counsel stated that Defendant ultimately chose the second option (Tr. 9).

Counsel denied telling Defendant that she would receive a sentence between 15 and 25 years (Tr. 22). Counsel testified that she would have told Defendant that she was facing up to 30 years or life and that with serving 85% of the time she was looking at 25 years (Tr. 10). Counsel stated that she never gave Defendant a guarantee as to any sentence that she may receive (Tr. 10). Counsel testified that she told Defendant that it was her decision whether to plead guilty (Tr. 14, 15-16, 19).

Defendant testified that counsel told her that she would receive between 15 and 25 years and that this scared her (Tr. 28). Defendant testified

that she wanted to go to trial but that she pleaded guilty because she did not want to serve 15-25 years (Tr. 29, 34, 36, 38-39).

Defendant's father testified that counsel told him that there was a 90% chance for Defendant to be convicted and that she faced life in prison (Tr. 48).

The motion court found that counsel's advice did not constitute coercion and that counsel's testimony was credible (L.F. 7:5-6).

Appellate review of the motion court's denial of postconviction relief is limited to a determination of whether the motion court's findings and conclusions are clearly erroneous. Rule 24.035 (k); *Scarborough v. State*, 363 S.W.3d 401, 404 (Mo. App., S.D. 2012). The motion court's findings of fact and conclusions of law are clearly erroneous only if, after reviewing the entire record, the appellate court is left with the definite and firm impression a mistake has been made. *Id.*

To succeed on an ineffective assistance of counsel claim, appellant must demonstrate that 1) his counsel's performance was deficient and 2) that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Where a defendant pleads guilty, claims of ineffective assistance of counsel are only relevant as they affect the voluntariness and understanding with which the plea was made. *State v. Roll*, 942 S.W.2d 370, 375 (Mo. banc 1997). Appellant must show that the guilty plea "was not the product of an intelligent or knowing act." *Fogle v.*



*State*, 201 S.W.3d 110, 113 (Mo. App. S.D. 2006). If movant had a mistaken belief about his sentence, it could entitle him to relief only if the mistake was based on a positive misrepresentation on which he was entitled to rely, and if the mistake was reasonable. *Felton v. State*, 103 S.W.3d 367, 371-372 (Mo. App. S.D. 2003).

Defendant in the present cannot show that her guilty plea was coerced counsel's advice that she would receive 15 to 25 years if she went to trial. At the guilty plea hearing, Defendant stated that no one threatened or coerced to plead guilty, that no one promised her anything except the guilty plea agreement, and that she understood the rights she was giving up by pleading guilty and the range of punishment (L.F. 13:2-4). This record contradicts Defendant's claim that she was coerced by counsel to enter a plea of guilty. See *Davis v. State*, 435 S.W.3d 113, 117 (Mo. App. E.D. 2014) (the defendant's claim that counsel promised him a twelve-year sentence was refuted by the record where the defendant said that there were no promises about his sentence, that there were no threats, and repeatedly expressed satisfaction with counsel).

Additionally, plea counsel testified at the evidentiary hearing and denied that she told Defendant that she would receive 15 to 25 years after a trial (Tr. 10, 22). Counsel testified that she would have told Defendant that she was facing up to 30 years or life, and that she would serve 85% of the

time which would amount to 25 years (Tr. 10). The motion court found counsel's testimony credible (L.F. 7:5-6). The motion court determines the credibility of witnesses and it is not required to believe the testimony of the defendant or any other witness at an evidentiary hearing even if uncontradicted. *Wilhite v. State*, 339 S.W.3d 573, 576 (Mo. App. W.D. 2011).

Moreover, trial counsel's advice was coercive, but it merely provided information about the possible consequences of trial. Trial counsel has a duty to advise clients that they might receive a greater sentence if they go to trial. *Smith v. State*, 513 S.W.2d 407, 411 (Mo. banc 1974); *Moore v. State*, 207 S.W.3d 725, 731 (Mo. App. S.D. 2006). "An able attorney will endeavor to help his or her client understand all the possible consequences of alternatives and strategies." *Moore*, 207 S.W.3d at 731. Therefore, mere prediction or advice of counsel as to sentence will not lead to a finding of coercion that renders a guilty plea involuntary. *Id.* Defendant failed to prove that her plea was involuntary. Defendant's claim should be denied.

## CONCLUSION

For the foregoing reasons, the respondent submits that the denial of the Appellant's Rule 24.035 motion should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify:

That the attached brief complies with the limitations contained in Supreme Court Rule 84.0, and contains 1,509 words as determined by Microsoft Word 2010 software.

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